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Discussion panel A

Responsible fisheries and illegal, unregulated and unreported fisheries
Moving from principles to implementation

Illegal, unreported and unregulated fishing

Submission by the Food and Agriculture Organization of the United Nations

I. Introduction

1. Illegal, unreported and unregulated (IUU) fishing has far-reaching consequences for the long-term sustainable management of fishery resources.[1] When IUU fishing goes unchecked, the system upon which fisheries management decisions are based becomes fundamentally flawed. This situation leads to the non-achievement of management goals and the loss of both short-term and long-term social and economic opportunities. In the extreme, IUU fishing can lead to the collapse of a fishery or seriously affect efforts to rebuild fish stocks that have already been depleted.

2. It has been long recognized that IUU fishing serves to undermine the work of national administrations to manage fisheries and regional initiatives taken by fisheries management organizations. Under these conditions it is difficult to anticipate that fisheries resources will be effectively conserved and managed.

3. The circumstances that lead to IUU fishing are complex, but in some way or another are usually interrelated and of an economic nature. A key consideration in addressing IUU fishing is the need to achieve more effective flag State control. Other considerations likely to contribute to IUU fishing include the existence of excess fleet capacity, the payment of government subsidies (where they maintain or increase capacity), strong market demand for particular products and ineffective monitoring, control and surveillance (MCS).

4. IUU fishing is high on the international fisheries agenda. Coordinated and innovative approaches to addressing the problem are required. The development of an international plan of action to combat IUU fishing will facilitate action towards this goal.

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II. International calls to combat IUU fishing

5. International concern about IUU fishing first became apparent in the 1990s. The issue has been addressed in a number of forums, including the United Nations General Assembly, on an ongoing basis.[2] However, the Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO), at its twenty-third session, in February 1999, considered IUU fishing in the context of FAO's Medium Term Prospects for Major Programmes, primarily on the basis of the paper made available to the Committee by the Government of Australia. The paper, *inter alia*, urged FAO to develop an international plan of action to combat IUU fishing.

6. COFI expressed concern about the reported high and growing incidence of IUU fishing, including the activities of fishing vessels from open registries. The Committee proposed a suite of activities to address the issue and recommended that the International Maritime Organization (IMO) be apprised of the importance COFI ascribed to the need to combat IUU fishing.

7. Shortly after COFI, an FAO Ministerial Meeting on Fisheries in March 1999 adopted a Declaration in which it, *inter alia*, expressed concern at the growing amount of IUU fishing. The Ministers declared that, without prejudice to the rights and obligations of States under international law, an international plan of action dealing with all forms of IUU fishing, including fishing vessels from open registries, should be developed. Subsequently, in June 1999, the FAO Council, in considering the report of COFI at its twenty-third session, urged FAO to take a global approach to the development of a strategy to address IUU fishing. Furthermore, the Council proposed that such an initiative should be carried forward through the development of an international plan of action within the framework of the FAO Code of Conduct for Responsible Fisheries.

8. Other international forums have focused on, and are continuing to address, issues relating to IUU fishing. The United Nations Commission on Sustainable Development at its 7th session, in April 1999, considered the issue, noting that FAO would give priority to the development of an international plan of action to deal effectively with any form of IUU fishing. The Commission underscored the importance of flag State and port State issues in combating IUU fishing.

9. In its report on the session, the Commission invited IMO to develop, as a matter of urgency, measures in binding form to ensure that ships of all flag States meet international rules and standards so as to give full and complete effect to the 1982 United Nations Convention on the Law of the Sea (article 91) as well as other relevant conventions. IMO has considered and will continue to consider IUU fishing in its various committees and subcommittees.

10. FAO is cooperating with IMO, as it has done in the past on fisheries and related matters, in line with international calls to secure concerted action to combat IUU fishing. Most notable in this connection, FAO has made a submission to the IMO Maritime Safety Committee (MSC) at its seventy-second session proposing the formation of a joint FAO/IMO ad hoc working group on IUU fishing and related matters. That action was taken following a request by the IMO Flag State Implementation Subcommittee at its eighth session.[3] The terms of reference proposed by FAO for the joint ad hoc working group are contained in the annex to the present report.[4] The seventy-second session of MSC is to be held at IMO headquarters, London, in May 2000. FAO will be in a position to advise the Open-ended Informal Consultative Process of the outcome of discussions on IUU fishing, including the decisions taken concerning the formation and mandate of the joint ad hoc working group.

11. To further investigate areas where FAO and IMO might collaborate more effectively to combat IUU fishing, FAO initiated a review to examine areas where cooperation is possible, given the respective mandates of the two organizations. FAO takes the view that that initiative represents a concrete step towards fulfilling the calls made in FAO, the Commission on Sustainable Development and the General Assembly for closer collaboration between FAO and IMO. The findings of the review will provide a valuable guide for future areas of work between the two organizations.

12. Regional fishery management organizations and other forums[5] have, in regular and special sessions, considered IUU fishing and have initiated steps independently of the FAO-led process to develop an international plan of action to combat IUU fishing.

13. Notably, steps to combat IUU fishing have already been taken by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of

Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Northwest Atlantic Fisheries Organization (NAFO) and the North-east Atlantic Fisheries Commission (NEAFC). Other fishery bodies are in the process of taking stock of, and addressing, IUU fishing.

14. These independent initiatives by regional fisheries management organizations indicate the serious global nature of IUU fishing and the extent to which it can undermine the work of these organizations. It is evident from their action that IUU fishing is taking place in all oceans and in all types of fisheries. Moreover, it is a problem generated by both contracting and non-contracting parties to regional fisheries management organizations. IUU fishing is not confined only to fishing vessels from open registries or to vessels from non-contracting parties to regional organizations.

III. Process for the development of the international plan of action

15. FAO has been given a very tight time-frame in which to elaborate an international plan of action to combat IUU fishing.

16. The process for the development of the plan will follow a two-step approach. In the first instance the Government of Australia, in cooperation with FAO, will convene an Expert Consultation on IUU Fishing in Sydney, Australia, from 15 to 19 May 2000. The purpose of the meeting will be to consider all pertinent technical and legal issues relating to IUU fishing and to elaborate a preliminary draft of an international plan of action to combat IUU fishing.

17. The report of the Sydney Expert Consultation will be made available to an FAO Technical Consultation on IUU Fishing to be held in Rome from 3 to 6 October 2000. The preliminary draft of the international plan of action will be appended to that report. It is anticipated that the preliminary draft will provide a useful basis for discussion and negotiation at the Technical Consultation, while recognizing that the preliminary draft would in no manner pre-empt or prejudice discussion at the Technical Consultation. It is envisaged that the Government of Australia will report to the Open-ended Informal Consultative Process on the outcome the Expert Consultation in Sydney.

18. FAO will report to COFI at its twenty-fourth session in February 2001 on progress achieved in fulfilling the mandate provided concerning IUU fishing, and in particular the request to develop an international plan of action to combat IUU fishing. Given the urgency of the problem and the strong international focus on the issue, FAO anticipates that it will be possible to provide COFI with a draft international plan of action for consideration and possible adoption.

IV. Characteristics of the international plan of action

19. Like the other international plans of action that were concluded in 1999, the international plan of action to combat IUU fishing would be a voluntary instrument, concluded within the framework of the Code of Conduct for Responsible Fisheries. In this manner the international plan of action will have parallel goals and objectives to the Code of Conduct: that is, long-term sustainable fisheries. In this regard it might be noted that IUU fishing is fundamentally opposed to the conservation and management principles of the Code of Conduct, for the reasons outlined in the introduction to the present paper.

20. It is envisaged that the plan's structure will be similar to the International Plan of Action for the Management of Fishing Capacity. By pursuing a structure that has already been negotiated and agreed, the process for the elaboration of the international plan of action to combat IUU fishing will be facilitated. Given the time-frame for the process, FAO is of the opinion that this is an important consideration since the loss of valuable negotiation time at the Technical Consultation, and afterwards, will be minimized.

21. Critical issues that the international plan of action is expected to address include:-

- Nature and scope of the plan;
- Objectives and principles;
- Immediate and longer-term action required to combat IUU fishing (including national action and legislative considerations, international fisheries instruments, coastal State measures, flag

State responsibility, port State measures, market measures, MCS, data considerations, regional fisheries management organizations, etc.);

- Preparation and implementation of national plans (including matters pertaining to the development of national plans and policies and regional considerations);
- Mechanisms to promote implementation (including international cooperation, reporting and the role of FAO).

V. Implementation and monitoring of the international plan of action

22. In the event that the international plan of action is adopted by COFI, it is envisaged that all States, irrespective of their role in the fisheries sector (coastal State, flag State and port State), individually and through their participation in regional fisheries management organizations, will be expected to implement the plan.

23. The goals of the international plan of action will be met largely through national action towards the elaboration and implementation of plans to combat IUU fishing and through the national implementation of decisions taken by regional fisheries management organizations.

24. Reinforcing the implementation of the international plan of action to combat IUU fishing will be action by States to implement the Code of Conduct and the International Plan of Action on the Management of Fishing Capacity. The acceptance and ratification of the FAO Agreement to Promote Compliance with International Conservation and Management by Fishing Vessels on the High Seas (Compliance Agreement) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement) will also greatly assist in addressing IUU fishing.

25. COFI at its biennial sessions will monitor the implementation of the international plan of action to combat IUU fishing, as it does with other international plans of action, in the context of the Committee's deliberations relating to the implementation of the Code of Conduct. Initially, a self-assessment process will be followed by FAO members, but later expanded or additional assessments might be developed as a means of enhanced reporting and monitoring.

VI. Conclusion

26. The consequences of IUU fishing are clearly apparent in world fisheries and already there have been strong international calls to address the issue as a matter of priority. To this end it was agreed in 1999 that FAO should take the lead in elaborating an international plan of action to combat IUU fishing. Support for this initiative has been widespread and has included support from the Commission on Sustainable Development and the General Assembly.

27. The purpose of the international plan of action will be to combat IUU fishing so that efforts by national and regional authorities to conserve and manage fish stocks will not be undermined. The entry into force of the Compliance Agreement and the Fish Stocks Agreement, together with the fuller implementation of the Code of Conduct and the international plans of action on reducing incidental catches of seabirds in longline fisheries, conservation and management of sharks, and the management of fishing capacity will strengthen the ability of the international plan of action on IUU fishing to achieve its objectives through links with these and other instruments.

28. If international efforts to combat IUU fishing are successful, the prospects are favourable that further progress will be made in moving along the path towards long-term sustainable fisheries. On the other hand, the failure to achieve a comprehensive, realistic and implementable international plan of action to combat IUU fishing, in the face of poor flag State control over some of the world's fishing fleets, will accelerate the degradation of important and valuable fisheries. Moreover, and significantly, continued IUU fishing will stifle attempts to rebuild fish stocks where stocks have already been overfished.

29. The long-term sustainable use of fisheries, as envisaged in chapter 17 of Agenda 21 and subsequent international fisheries instruments, requires a high degree of international cooperation and agreement to deter and prevent actions that adversely impact the long-term productive capacity of fish stocks. IUU

fishing must be eliminated if sustainability is to be achieved.

Notes

[1] IUU fishing occurs, or has the potential to occur, in all capture fisheries. the practice is problematic in inland fisheries as well as marine capture fisheries in zones of national jurisdiction and on the high seas. In industrial fisheries, the problems of IUU fishing are exacerbated by weak flag State control by some States, a point that has been noted by both the United Nations Commission on Sustainable Development and the General Assembly.

[2] The General Assembly has been addressing IUU fishing principally under the heading of "unauthorized fishing in zones of national jurisdiction and on the high seas".

[3] The report of the session noted: "FAO's leadership is essential as prime mover to make progress on the matter and FSI 8 had invited FAO to provide draft terms of reference to MSC 72, and agreed to leave this matter to MSC 72 for further consideration".

[4] FAO informally consulted with several of its members concerning the terms of reference prior to submitting them to the IMO secretariat in March 2000.

[5] For example, the Ad Hoc Workshop of the Asia-Pacific Economic Cooperation Fisheries Working Group, Kesen-Numa, Japan, 13-15 July 1999, and the International Conference on Monitoring, Control and Fishing Surveillance, Santiago, Chile, 25-26 January 2000, addressed IUU fishing in a substantive manner and proposed measures to deal with it. Those measures have been integrated into the FAO process for the development of an international plan of action to combat IUU fishing.

Annex

Draft terms of reference of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters

Background

1. The Maritime Safety Committee (MSC) at its seventy-second session endorsed the recommendation of the Flag State Implementation Subcommittee (FSI) at its eighth session, which was supported by the Marine Environmental Protection Committee (MEPC) at its forty-fourth session, for the formulation of a joint FAO/IMO ad hoc working group on matters relating to illegal, unreported and unregulated (IUU) fishing. The Committee agreed that, owing to the urgency of the matter, the ad hoc working group should be set up as soon as possible and that those terms of reference would apply. MSC also agreed that relevant working documents and the report of the Expert Consultation on Illegal, Unreported and Unregulated Fishing organized by the Government of Australia in cooperation with FAO, to be held at Sydney, Australia, from 15 to 19 May 2000, should be made available to the ad hoc working group as a background document for further deliberations of the working group. The ad hoc working group shall also take into consideration the report of the Commission on Sustainable Development at its seventh session, General Assembly resolution 54/32 of 24 November 1999 and documents FSI 8/6 and FSI 8/INF.6.

Timetable

2. Taking into account the need for urgent action to address IUU fishing, the Committee decided that:

- In the inter-sessional period between the seventy-second and the seventy-third sessions of MSC (between May and December 2000), the secretariats of FAO and IMO would prepare a working document for consideration by the group;
- The joint FAO/IMO ad hoc working group would meet before the seventy-third session of MSC and would report to MSC at that session, in December 2000.

Terms of reference

3. Taking into account the documentation prepared for the Expert Consultation on IUU Fishing in Sydney, Australia, and further taking into account the respective competences, mandates and experience of FAO and IMO, the joint ad hoc working group will:

(a) Prepare a checklist of the necessary elements for effective flag State control over a fishing vessel. This checklist will provide further guidance on how the issues involved in IUU fishing could be incorporated into the FSI work programme as well as the work programme[a] of FAO. The checklist will relate to:

- Maritime safety;
- Prevention of marine pollution;

- Minimum agreed standards in relation to the safety of the crew, health and work on board a fishing vessel;
- Determining the position of fishing vessels at sea and for the reporting of catch data and how they may be incorporated in mechanisms for flag State control.

(b) Review measures that may be taken by a port State in relation to the technical and administrative procedures for the inspection of a foreign-flag fishing vessel, including its fishing gear and its catch, and also:

- Establish a list of criteria for such inspections and make proposals on how the inspections may be carried out in relation to the respective competence of fisheries and maritime administrations;
- Provide a draft of the qualifications and experience required of inspectors/surveyors for the various inspections envisaged;
- Make recommendations on how best a harmonized system for the inspection of foreign-flag fishing vessels might be applied on a regional and/or subregional basis by port States.

Guidance for the ad hoc working group

4. Particular attention should be given to the requirements for vessels entitled to fly the flag of a flag State operating in waters under the jurisdiction of the same flag State, on the high seas and in waters of a State other than those of the flag State and the need to combat IUU fishing.

Cooperation with other United Nations agencies

5. In relation to conditions of work and service in the fishing industry, the working group may call upon the advice of the International Labour Organization. The cooperation of other relevant agencies may also be sought on particular aspects, within their competences, that affect efforts to combat IUU fishing.

Notes

[a] IMO 2000. Report of the Subcommittee on Flag State Implementation, 8th Session (London, IMO). See FSI 8/19, para. 6.14.

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List of suggested items which may provide substantial input to the Consultative Process

Submitted by the delegation of Norway

1. The present paper is intended to provide input to the Informal Consultative Process, as set forth in General Assembly resolution 54/33.

2. Progress in particular fields can be achieved through increased cooperation and coordination at the international and inter-agency levels. This presupposes, moreover, appropriate measures of the same nature at the national level. There is an interface between national and international coordination.

3. The suggestions to the General Assembly emanating from the Informal Consultative Process should focus on a limited number of concrete issues, in order to prevent generating expectations which in practice cannot be fulfilled. Such concrete issues should be identified and analysed against the background of the annual report of the Secretary-General to the General Assembly on oceans and the law of the sea. The report also includes, in an integrated manner, the recommendations made by the Commission on Sustainable Development, as a result of the review of the sectoral theme of "oceans and seas" under chapter 17 of Agenda 21, in 1999. This approach would be fully in accordance with the mandate of the process as stipulated in resolution 54/33:

> "to facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced" (para. 2).

4. We would suggest consideration of the following issues which may in turn be subdivided in a number of elements:

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(a) A plan of action for marine scientific research as a prerequisite for enhanced coordination and effectiveness;

(b) Systematic and concerted consideration of international rules and national legislation to prevent, reduce and control pollution of the marine environment.

A. Plan of action for marine scientific research

- Scientific understanding of the marine ecosystems, including marine living organisms at all levels and their habitats as well as important influences on these ecosystems including pollution, is fundamental to sound decision-making. Sustainable management of natural marine resources as well as proper protection and preservation of the marine environment presupposes availability and dissemination of scientific information. Without the required flows of scientific information, a number of challenges cannot be effectively met.

- The entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994 brought into being a new regime for the conduct and promotion of marine scientific research. This regime, as defined in Part XIII of UNCLOS, provides only for ground rules with regard to the adoption and implementation of a number of measures. States as well as competent international organizations have an obligation to promote international cooperation in marine scientific research for peaceful purposes. This requires the creation of favourable conditions for the integration of efforts of scientists in the study of processes occurring in the marine environment and the interrelations between them.

- States and competent international organizations have also an obligation, in accordance with the terms of UNCLOS, to publish and disseminate relevant information and knowledge. The competent international organization with regard to Part XIII of UNCLOS, the Intergovernmental Oceanographic Commission (IOC), should play a more assertive role in marine affairs in general and in scientific research in particular.

- In our view, national as well as international levels of activity in this field have a huge potential for expansion and improvement. The regime envisaged by UNCLOS would risk remaining "an empty shell" unless concrete policies and results-oriented initiatives can be formulated and implemented. We would for our part suggest consideration of the following measures:

  - Facilitation of scientific research on modern management principles such as the precautionary approach and the ecosystem approach by competent bodies at the regional, subregional and national levels as appropriate, and dissemination of the results;

  - Adoption and/or harmonization of national rules, regulations and procedures to promote and facilitate marine scientific research;

  - Establishment of national focal points which may enhance international and national coordination in order to promote flows of scientific data and information. Each national system should have a coordinating contact point;

- Link-up and interaction between national focal points and relevant scientific communities, governmental agencies and major groups, i.e. Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP), and Global Ocean Observing System (GOOS);
- Consideration of appropriate programmes of work to fulfil the role of competent international organizations in the implementation of UNCLOS Part XIII on a priority basis (IOC, Administrative Committee on Coordination (ACC) Subcommittee on Oceans and Coastal Areas, etc.);
- Consideration of new policies to ensure access and exchange of data and information within the framework of the IOC Committee on International Oceanographic Data and Information Exchange (IODE);
- Consideration of ways and means to ensure the promotion of marine scientific research in relevant international forums, i.e. through recommendations to IOC;
- Consideration of ways and means to strengthen marine science capabilities in developing countries, based on recommendations from competent international organizations (IOC, etc);
- Coordination within the United Nations Secretariat.

B. Systematic and concerted consideration of international rules and national legislation to protect and preserve the marine environment

5. A considerable potential for formulation of policies and implementation of measures remains to be realized when one considers the objectives as well as the ground rules in Part XII of UNCLOS. Ground rules provide both possibilities and constraints. Ground rules are not and cannot be a surrogate for policies and appropriate action.

6. It may now be timely to conduct a review of the national, regional and global implementation of this part of UNCLOS, provided that focus is given to a few concrete issues to be dealt with on a priority basis:

- Pollution from land-based sources: Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (UNCLOS art. 207, para. 4, *in fine*). Role of the United Nations Environment Programme (UNEP), GESAMP, global international waters assessment (GIWA), the Global Environment Facility (GEF), etc., in this context;
- Pollution from vessels: consideration of measures to implement UNCLOS article 211, including the concept of special areas, establishment of traffic separation schemes, etc. Assistance to the International Maritime Organization (IMO) and other relevant international organizations in this context;
- The relationship between protection of marine ecosystems and different forms of human utilization, such as fisheries, protection of valuable areas and habitats, including coral reefs;

- Review and assessment of existing measures for the prevention of intentional or accidental introduction of species (UNCLOS art. 196);
- Contingency plans against pollution. Analysis of deficiencies in the light of major oil spills (e.g., "Eureka") from vessels. The challenge of flags of convenience. The need for a revitalization of the consideration of "genuine link";
- An assessment of flag State implementation and enforcement. Full implementation of MARPOL regulations is dependant upon effective flag State implementation and enforcement. Can MARPOL's effectiveness be enhanced, nationally as well as internationally?
- An assessment of port State enforcement and adequate reception facilities. Cross-fertilization of experience gained in different regions? Reports should be published;
- Can information flows be enhanced through appropriate use of new information and communication technologies?